



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1058]

RIN 1625-AA00

Safety Zone; Mississippi River, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for navigable waters of the Mississippi River, New Orleans, LA. These actions are necessary to protect persons and vessels from potential safety hazards associated with fireworks displays on or over this navigable waterway. Entry into these zones is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative.

DATES: This rule is effective from 8:00 p.m. on May 6, 2018 through 8:45 p.m. on May 25, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-1058 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Sector New Orleans, US Coast Guard; telephone 504-365-2281, email Howard.K.Vacco@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP	Above Head of Passes
CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard received notification of the following fireworks displays that require safety zones:

- (1) On November 7, 2017, the New Orleans Tourism and Marketing Corporation notified the Coast Guard that it would be conducting a fireworks display from 7:45 p.m. through 8:45 p.m. on May 25, 2018. The fireworks will be launched from a barge on the Lower Mississippi River at approximate mile marker (MM) 95.9 above Head of Passes (AHP), New Orleans, LA.
- (2) On March 14, 2018, the NOLA 2018 Foundation notified the Coast Guard that it would be conducting a fireworks display from 8 p.m. through 8:20 p.m. on May 6, 2018. The fireworks will be launched from a barge on the Lower Mississippi River at approximate MM 95.4 AHP, New Orleans, LA.

In response to these notifications, on January 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lower Mississippi River, New Orleans, LA (83 FR 2394). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended March 19, 2018, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with the fireworks to be used in the May 6, 2018 and May 25, 2018 displays present a hazard to anyone within a one-mile stretch of the launch barges. The purpose of this rule is to ensure safety of persons and vessels on the navigable waters in the safety zone before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 17, 2018.

The changes in the regulatory text from the proposed rule in the NPRM include minor editorial changes where we refer to the time of enforcement as the enforcement period, rather than the effective period.

This rule establishes two temporary safety zones on the following dates and locations:

1. Bayou Country Music Fest: A safety zone from 7:45 p.m. through 8:45 p.m. on May 25, 2018. The safety zone will cover all navigable waters of the Lower Mississippi River between mile marker (MM) 95.4 and MM 96.4 AHP.
2. NOLA Tricentennial 2018 Jazz and Heritage Fest: A safety zone from 8 p.m. through 9 p.m. on May 6, 2018. This safety zone will encompass all navigable waters of the Lower Mississippi River between MMs 95 and 96 AHP.

Both safety zones encompass a one mile stretch of river with a duration lasting no more than one hour. The duration of the zones is intended to ensure the safety of persons

and vessels on these navigable waters before, during, and after the scheduled fireworks displays.

No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. They may be contacted on VHF-FM Channel 16 or 67. Persons and vessels permitted to enter these safety zones must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on these zones lasting one hour and encompassing a one-mile stretch of the Lower Mississippi River. In addition, vessel traffic seeking to transit the areas can seek permission to enter from the COTP or his designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones lasting less than one hour each that will prohibit entry within a one-mile stretch of the Lower Mississippi River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-1058 to read as follows:

§ 165.T08-1058 Safety Zones; Lower Mississippi River, New Orleans, LA.

- (a) Safety zones. The following areas are safety zones:

- (1) Bayou Country Music Fest, New Orleans, LA--(i) Location. All navigable waters of the Lower Mississippi River between mile marker (MM) 95.4 and MM 96.4, above Head of Passes.

- (ii) Enforcement period. This rule will be enforced from 7:45 p.m. through 8:45 p.m. on May 25, 2018.

- (2) NOLA Tricentennial 2018 Jazz and Heritage Fest--(i) Location. All navigable waters of the Lower Mississippi River between mile marker (MM) 94 and MM 95, above Head of Passes.

- (ii) Enforcement period. This rule will be enforced from 8 p.m. through 9 p.m. on May 6, 2018.

(b) Regulations. (1) In accordance with the general regulations in §165.23, entry into these zones is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of U.S. Coast Guard Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67.

(3) Persons and vessels permitted to enter these safety zones must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(c) Information broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: April 9, 2018.

Wayne R. Arguin,
Captain, U.S. Coast Guard,
Captain of the Port Sector New Orleans.
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